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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,839	01/29/2004	Pierre Holzschuh	0514-1106-1	2334
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YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER STULII, VERA	
			ART UNIT 1761	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/765,839

Applicant(s)

HOLZSCHUH ET AL.

Examiner

Vera Stulii

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>01/29/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I in the reply filed on 02/12/2007 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claims 1-20 are rendered indefinite for the following reasons:

-the phrase "in particular" renders claim 1 indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

-it is not clear what "process .. characterized in.." means. The phrase fails to conform with current U.S. practice;

-the phrase "comprises essentially at least one step of flavoring" is indefinite. The phrase does not provide the clear denotation of metes and bounds of the claimed

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invention, such that one skilled in the art would know which steps were included, and excluded by the instant claims;

-the phrases "flavoring consisting in giving a smoked flavor" and "coloring, ..., consisting in giving a supplemental color" are indefinite. It is not clear whether Applicants mean "imparting" flavor/color to the food product, or there is other interpretation. It is also not clear what is meant by the term "supplemental color";

-the phrase "step of coloring, independent of said flavoring step" is indefinite. It is not clear in what way the steps are independent.

-the phrase "particular supplemental nuance" is also indefinite.

-the phrase "particular by reinforcing the color previously obtained" is also indefinite. It is not clear as to how the color is being "reinforced", and what does such reinforcement means. Claim 1 recites the limitation " the color previously obtained " in line 7. There is insufficient antecedent basis for this limitation in the claim. It is also not clear previously to what point or step the color was obtained.

-the phrase "process ... comprises moreover a step of preservation" fails to conform with current U.S. practice.

-the phrase "a step of preservation...consisting in placing the food product to be prepared" in claim 2 is also indefinite. The phrase does not provide the clear denotation of metes and bounds of the claimed invention, such that one skilled in the art would know which steps were included, and excluded by the instant claims;

-the phrase "already partially prepared" is also indefinite. It is not clear to what extent the food product is prepared.

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-claims 2, 15, 17 recite the phrase "a substance selected from the group formed by ..." The recitation of a selection from a group of elements in a claim should comply with accepted U.S. Patent practice with regard to the recitation of Markush grouping of claim elements. Phrases using "comprising" are open sets, and should recite elements in the alternative (i.e. "comprising A, B, C or D"), whereas closed sets ("consisting of") should recite elements as "selected from the group consisting of A, B, C and D." See at least claims 2, 15, 17.

-regarding claims 3-6, the phrases "temperature comprised between" and "if desired" is also indefinite. The phrases fail to conform with current U.S. practice.

-regarding claims 3-6, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

-regarding claims 3-4, the phrase "and the like" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

-the phrases "undesirable compounds" and "acceptable concentration" are also indefinite. It is not clear to whom the concentration is acceptable and compound is undesirable (claims 3-6).

-regarding claims 3-6, a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by

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the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 3-6 recite the broad recitation of temperatures, and the claim also recites different recitation of temperatures which is the narrower statement of the range/limitation. This due, in part, to the term "preferably".

-in claims 7-8, the phrase "the pyrolysis take place under precise control, to about 0.1%, of the volume of oxygen" is indefinite. It is not clear how pyrolysis may take place under "to about 0.1%". It is not clear how pyrolysis may take place under "of the volume of oxygen". It is not clear what "precise" means, to what degree of what measure.

-claim 9 recites the limitation "the organic pyrolyzed material" in line 2. There is insufficient antecedent basis for this limitation in the claim.

-in claim 9, the phrase "essentially constituted by fibers or chips" is also indefinite. The phrase does not provide the clear denotation of metes and bounds of the claimed invention, such that one skilled in the art would know what was included, and excluded by the instant claims;

-regarding claim 9, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

-in claim 9, it is unclear whether the phrase "one vegetable substance such as wood, cellulose or any other mono or polysaccharide or ligno-cellulose complex" is directed to:

- wood, cellulose or any other mono or polysaccharide;
- wood, cellulose or ligno-cellulose complex;
- wood, or cellulose or any other mono or polysaccharide, or ligno-cellulose complex ;
- some other interpretation;

-claims 10 and 11 are disjointed with claim 2. Claim 2 recites treating food product with preservation product obtained by pyrolysis, while claims 10 and 11 recite method of pyrolysis;

- in claims 10 and 11, the phrase "comprising essentially" is also indefinite. The phrase does not provide the clear denotation of metes and bounds of the claimed invention, such that one skilled in the art would know what was included, and excluded by the instant claims;

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 9, 17-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ande et al.

In regard to claim 1 and 20, Ande et al disclose treatment of raw meat with coloring and flavoring solution. Ande et al disclose that "the coloring solution contains from 1% to 30% caramel and from 40% to 99% liquid smoke" (Col. 2 lines 40-41). Ande et al disclose that "liquid smoke solution is representative of the whole preferred spectrum of smoke colors and flavors without a preference of any one type" (Col. 3 lines 33-35).

In regard to claim 2 and 9, Ande et al disclose treatment of raw meat with liquid smoke that produced by limiting burning (pyrolysis) of wood (Col. 3 lines 23-26).

In regard to claim 17, Ande et al disclose that coloring/flavoring composition comprises caramel and annatto (Col. 2 lines 40-44).

In regard to claim 18, Ande et al disclose that "the coating with the coloring solution may be done employing conventional coating techniques such as spraying, atomizing, drenching and dipping" (Col. 61-63).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-8, 10-12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ande et al (US 4,877,626).

Ande et al do not disclose pyrolysis temperature and process (i.e. process of liquid smoke production), and smoking the food product.

Ande et al is taken as cited above.

Ande et al disclose use of commercially available liquid smoke products that have been approved for use in foods by FDA and the Meat Division of the U.S Department of Agriculture. Ande et al disclose that "The invention is not limited to those liquid smokes specified herein, but may include others selected by those skilled in the art. The liquid smokes may be used individually or as mixtures of various liquid smokes" (Col. 3 Lines 51-55). Ande et al disclose cooking meat after applying coloring/flavoring solution.

Since Ande et al discloses that not limited various liquid smokes may be used (any "selected by those skill in the art"), but does not disclose the method and conditions of liquid smoke preparation, one of the ordinary skill in the art would have

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been motivated to choose liquid smoke based on its organoleptic qualities such as aroma, color imparted to meat, etc. Using particular liquid smoke prepared by particular method would have been a matter of personal choice absent any convincing and clear evidence to the contrary. Since Ande et al disclose use of flavoring/coloring solution containing liquid smoke and further cooking of meat, one of the ordinary skill in the art would have been motivated to employ well known method of cooking such as smoking. One of the ordinary skill in the art would have been motivated to do so in order to obtain meat product having organoleptic characteristics of a smoked meat such as taste, aroma, color, texture, etc.

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ande et al (US 4,877,626) in view of Kerry et al (Meat Processing - Improving Quality) and Chiu (4,171,381).

Ande et al do not disclose that coloring step is performed by Maillard reaction.

Kerry et al disclose forming flavor compounds in processed meat using Maillard reaction products (p.107) Kerry et al also discloses direct reaction of hexanal with amino acids.

Chiu discloses using a Maillard reaction product of amino acid to impart "a smear resistant brown smoke color coating to food products" (Abstract). Chiu discloses that "the actual operation of smoking by spraying or dipping is not completely satisfactory due to the equipment expenses and the limited degree of control that has been found, and incorporation of liquid smoke solutions in the meat recipe does not always provide

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the desired surface appearance because of dilution of smoke ingredients" (Col. 2 lines 13-18).

Since Ande et al discloses flavoring and coloring of meat, and Kerry et al and Chiu discloses flavoring and coloring of meat using Maillard reaction products to produce a variety of flavoring compounds, one of the ordinary skill in the art would have been motivated to employ Maillard reaction products to provide desired surface appearance as taught by Chiu and Kerry et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vera Stulii

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